

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 21, 2005

**D046994 Ratepayers for Affordable Clean Energy v. California Public Utilities
Commission/BHP Billiton LNG International Inc., et al.**

The stay issued by this court on September 14, 2005 is vacated.

Petitioner is directed to file and serve an amended petition and exhibits or, alternatively, notice that it will be relying on its original petition and exhibits on or before December 23, 2005. Respondent and real parties shall file and serve responses to the petition on or before February 10, 2006. Petitioner shall file and serve a reply on or before March 13, 2006.

At the request of petitioner, the City of Palo Alto and Calpine Corporation are dismissed without prejudice from this proceeding.

D045634 People v. Stanley

The motion to augment received November 9, 2005, is granted.

The opinion filed October 25, 2005, is modified.

As modified, the petition for rehearing is denied.

There is no change in the judgment

D044355 People v. Hasley

The judgment is affirmed. McDonald, J.; We Concur: Nares, J., McIntyre, J.

Court convened at 9 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

Clerk: D. Moore

D045540 People v. Prescott

Cause called on merits. Harry Zimmerman, Esq. argued for appellant. David Delgago-Rucci, Deputy Attorney General argued for respondent. Mr. Zimmerman replied. Cause to be submitted once letter briefs have been received.

Court recessed at 10:24 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

D045506 Shapiro v. Board of Directors of the Centre City Development Corporation, et al.

Cause called on merits. Charles Wolfinger, Esq. argued for appellant. Judith Hartwig, Esq. argued for respondent, Board of Directors. David Karlin, Esq. argued for respondent, City. Mr. Wolfinger replied. Cause submitted.

Court recessed at 10:41 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D045269 Garcia Produce, LLC et al. v. De La Fuente Business Park Owners Association

Cause called on merits. Michael N. Fish, Esq. argued for appellant. Edward I. Silverman, Esq. argued for respondent. Mr. Fish replied. Cause submitted.

Court adjourned at 10:52.

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D046677 Thorworth v. Nugent & Newnham, APC et al.

The November 16, 2005, order dismissing the appeal for failure to file an Appellant's Opening Brief is vacated. The appeal is reinstated for the purpose of dismissal by stipulation of the parties. The "Stipulation to Dismiss Appeal" is accepted. The remittitur is ordered to issue immediately. Each party to bear its own costs on appeal.

D047255 Kimberly B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Kimberly B. has notified the court on behalf of the petitioner that a Petition for writ of mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047311 Patricia P. et al., v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Berry P. has notified the court on behalf of the petitioner that a Petition for writ of mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047310 Katrina W. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Katrina W. has notified the court on behalf of the petitioner that a Petition for writ of mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047217 In re Calvin Pritchett, Jr. on Habeas Corpus

The petition is denied.

D047248 Zoological Society of San Diego v. Superior Court of San Diego County/Hare

The petition is denied.

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D046886 People v. Wilkinson

The judgment is modified by striking the \$1,000 restitution fine and the \$1,000 parole revocation fine. As so modified, the judgment is affirmed. The \$100 fines remain. The trial court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D046949 In re Beau A., a Juvenile

The appeal is dismissed. McDonald, J.; We Concur: Benke, Acting, P.J., Haller, J.

D044881 Western Light Source, Inc. v. Brookwood Kearny Mesa Investors, LLC

The judgment is reversed, and the matter is remanded for a new trial. Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D045732 People v. Perez

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D044493 People v. Marks

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.

D046963 Parrish C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Benke, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D045506 Shapiro v. Board of Directors of the Centre City Development Corporation et al.

The judgment is reversed. The trial court is instructed to issue declaratory and mandamus relief on that basis that the Board of Directors of Centre City Development Corporation may not meet in closed session with legal counsel for the Redevelopment Agency of the City of San Diego to discuss the Agency's eminent domain litigation because CCDC is not a party to that litigation. CERTIFIED FOR PUBLICATION. Irion, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D046194 Carla S. C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Let a writ of mandate issue directing the superior court to vacate its judgment of November 19, 2004, terminating parental rights and to entertain further proceedings consistent with this opinion. This opinion is final as to this court 10 days after it is filed. (Rule 24(b)(3)).

D042717 Davila et al. v. Nickell et al./Rodriguez

D044257 Davila et al. v. Nickell et al./Rodriguez

(Consolidated cases) The petitions for rehearing by appellants and respondents are denied. It is ordered that the opinion filed on October 26, 2005, is modified. There is no change in the judgment.

D045479 In re M.S.C., a Juvenile

Because of the disposition of the writ petition, *In re M.S.C.*, D046194, the above-captioned appeal is dismissed as moot.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
November 22, 2005 (Continued)

D047191 Del Rio v. The Superior Court of San Diego County/People

Let a peremptory writ of mandate issue directing the Superior Court of San Diego County to vacate its order of September 8, 2005, denying petitioner's motion for DNA testing and to determine whether petitioner is entitled to appointment of counsel under Penal Code section 1405, subdivision (b), to assist him in preparing and presenting the motion. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 24(b)(3)).

D045869 People v. Ralph

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 30.3).

D045557 Bivens v. Gallery Corporation

The judgment of dismissal is affirmed. Gallery is entitled to its costs on appeal. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.

D045687 City of San Diego et al. v. Kaiser

The request for publication of the opinion is denied.

D045568 Privacy Rights Clearinghouse et al. v. Jetblue Airways Corporation et al.

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Huffman, J.

D047353 Natividad R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Natividad R. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed. The case is dismissed.

D047355 Melissa L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Melissa L. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047491 A., a Minor v. The Superior Court of San Diego County/San Diego Unified School District et al.

The petition is denied.

D047558 A., a Minor v. The Superior Court of San Diego County/San Diego Unified School District et al.

The "Petition for Writ of Supersedeas, prohibition, temporary stay and/or other appropriate relief and request for stay of superior court order of November 17, 2005" is deemed a petition for Writ of Mandate and request for stay. The petition is denied.

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D045035 Carmel Valley, LLC v. RPS Partnership, L.P. et al.

The judgment of the trial court is reversed and the matter is remanded. Costs are awarded to appellant. Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

D045509 Adoption of Joshua S., a Minor

Appellant's petition for rehearing is denied.

D047446 Bertha C. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Bertha C. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047435 Rosemary O. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Rosemary O. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047434 Cecilia G. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Cecilia G. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D045379 Conde v. City of San Diego

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.
CERTIFIED FOR PUBLICATION

D046481 In re Terrance B., a Juvenile

The judgment terminating parental rights is reversed, and the matter is remanded to the juvenile court with directions to order Agency (1) to make proper inquiry of the Blackfoot Tribe of North Carolina and the BI; (2) to comply with the notice provisions of ICWA, the relevant case law interpreting ICWA and the views expressed in this opinion; and (3) file all required documentation with the juvenile court for the court's inspection. If, after proper inquiry and notice, a tribe claims Terrance is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no response is received or no tribe claims that Terrance is an Indian child, the judgment terminating parental rights shall be reinstated. Cherilynn's motion to take additional evidence pursuant to Code of Civil Procedure section 909 for purposes of disposition has been considered by the court and is denied. McDonald, J.; We Concur: Benke, Acting P.J., McIntyre, J.

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November 23, 2005 (Continued)

D044666 **Gutierrez v. Nick Pecoraro Painting & Decorating, Inc.**

D044675 **Irwin v. Nick Pecoraro Painting & Decorating Inc., et al.**

(Consolidated.) We dismiss the appeal in case D044666. In case No. D044675, we reverse the June 11, 2004 order vacating the order compelling arbitration. Each party to bear its own costs on appeal in each case. Irion, J.; We Concur: Huffman Acting P.J., Aaron, J.

D046902 **People v. Ochoa**

D046903 **People v. Ochoa**

Appellant's unopposed motion to consolidate the above-numbered cases is granted. All documents will be filed under D046902.